No. 661. 1899

Ter. of Oklahoma ex rel. Cunningham, Atty. Gen. vs. O. C. Caffrey, Co. Clerk.

Objections to order allowing supersedeas.

Office Supreme Court U. S.
FILED
JAN 11 1899
JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1898.

Filed Jan. 11, 1899.

No. 661.

RICHARD F. CAFFREY, County Clerk, Oklahoma County, Oklahoma Territory, Plaintiff in Error and Appellant,

vs.

TERRITORY OF OKLAHOMA ex Rel. HARPER S. CUNNINGHAM, Attorney General, Defendant in Error and Appellee.

Objections to Order Allowing Supersedeas.

Comes now the defendant in error and appellee, The Territory of Oklahoma *ex rel.* Harper S. Cunningham, attorney general, and enters an appearance in the above-entitled cause, and objects to the allowing of the order prayed for in the plaintiff's motion for a supersedeas for the following reasons, to wit:

First. For that said cause is not such an one as to entitle the plaintiff in error to appeal in this case, and in support

of said suggestion the appellee shows to the court that this is a case involving simply the performance of a ministerial duty by a ministerial officer by mandamus in a court of competent jurisdiction, as an inspection of the record will show.

Second. That no Federal question is involved in said case.

Third. That the sum of five thousand dollars is not involved, but only the sum of $3,179.27 is involved, even if the total increased amount of taxes occasioned by the action of said board of equalization in adding to the returned assessed values of Oklahoma county were all collected and should be considered to be involved in this case, as is shown by the affidavit and certificate of the auditor of the Territory of Oklahoma; which affidavit is here referred to, marked "Exhibit A," and made a part of this ground of objection.

Fourth. For that the defense sought to be set up to this action was no defense whatever, as the matters and things therein sought to be set up and tried as a matter of defense had been before the supreme court of the Territory of Oklahoma in the case of Wallace *vs.* Bullen, reported in the 6th Oklahoma, page 17, and were also involved in the case of Stiles *vs.* Gray, reported in 6 Okla., at page 455, and were before the Supreme Court of the United States on appeal in the case of Gay *vs.* Thomas, and were by that court remanded to the territorial supreme court for final decision, as reported in volume 169, Reports of the Supreme Court of the United States, at page 264, and were finally decided by the supreme court of the Territory of Oklahoma in Wallace *vs.* Bullen, 6 Oklahoma, 757, which case was not appealed and became the settled law of the Territory of Oklahoma upon the subject involved.

For the above reasons appellee asks that the order deny-

ing supersedeas in said cause be made by the Supreme Court.

HARPER S. CUNNINGHAM,
Attorney General.

EXHIBIT A.

TERRITORY OF OKLAHOMA, *County of Logan,* } ss:

S. N. Hopkins, of lawful age, being first duly sworn, on his oath says:

That he is the duly appointed, qualified, and acting auditor of the Territory of Oklahoma and as such officer has charge of the books, records, and papers pertaining to the territorial board of equalization of taxes; that he has examined said records for the purpose of making this affidavit; that exclusive of the valuation of railroad property, which is three hundred thirty-six thousand six hundred and ninety-three ($336,693) dollars and which is not affected in any way by the action of the territorial board of equalization, as hereinafter mentioned, and which does not increase the amount of taxes affected by the action of said board, the total valuation of the property of Oklahoma county, in the Territory of Oklahoma, as returned by the county clerk to the territorial board of equalization, was three million eighty thousand six hundred and ninety-five dollars ($3,080,695); that the amount of the valuation of the county of Oklahoma as equalized by the territorial board of equalization was fixed at three million eight hundred twenty thousand and sixty-one ($3,820,061) dollars; that the amount of the raise added by said board to the returns of the assessors was seven hundred thirty-nine thousand three hundred and sixty-six ($739,366) dollars; that the amount of territorial taxes levied for the year 1898 by

law and by the territorial board of equalization as required by law was four and three-tenths mills on the dollar of valuation; that the local taxes in the county of Oklahoma were required by law to be levied upon the basis of valuation certified to the county clerk by the territorial board of equalization and in such amount as had been estimated by the board of county commissioners of said county at their July, 1898, meeting, as required by law, the amount of said local taxes not being in any manner whatever affected by the territorial board of equalization in equalizing as above set forth, except as to the rate of per cent. which would be required to raise the amount so estimated by said board as being sufficient and necessary for the county and local expenses during said year; that the effect of the raise in valuation in such equalization by said territorial board was simply to increase the taxes of the citizens of Oklahoma county by four and three-tenths mills per cent. upon the amount of the increase so added to the valuations returned by the assessors to the territorial board of equalization; that four and three-tenths mills per cent. upon the said amount, to wit, seven hundred thirty-nine thousand three hundred and sixty-six ($739,366) dollars, would produce the sum of three thousand one hundred seventy-nine dollars and twenty-seven cents ($3,179.27).

Further affiant saith not.

S. N. HOPKINS, *Auditor.*

Sworn to and subscribed before me this 4 day of January, A. D. 1899.

{ Seal of Albin A. Stevens, Notary Public, Guthrie, Logan Co., Okla. }

ALBIN A. STEVENS,
Notary Public.

My commission expires April 12, 1901.

Due personal service of the above objections and motions is hereby acknowledged this 7 day of January, A. D. 1899.

JAMES R. KEATON,
Attorney for Plaintiff in Error and Appellant.

[Endorsed:] File No. 17246. Supreme Court U. S., October term, 1898. Term No., 661. Richard F. Caffrey *et al.*, P. E. and app't, *vs.* The Territory of Oklahoma, &c. Objections to application for supersedeas. Filed January 11, 1899.

No. 182.

Brf. of Cunningham, Atty Gen'l

SUPREME COURT U.S.
FILED
MAR 6 1900
JAMES H. McKENNEY,
Clerk

Filed Mar. 6, 1900.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1899.

RICHARD F. CAFFREY, County Clerk of Oklahoma County, Oklahoma Territory, Plaintiff in Error and Appellant,

vs.

THE TERRITORY OF OKLAHOMA, ex rel., Harper S. Cunningham, Attorney General, Defendant in Error and Appellee.

No. 182.

BRIEF FOR DEFENDANT IN ERROR AND APPELLEE.

HARPER S. CUNNINGHAM,
CHARLES DICK, and
FREDERICK C. BRYAN,
For Defendant in Error and Appellee.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 182.

STATEMENT OF FACT.

This was an action of mandamus brought in the Supreme Court of the Territory of Oklahoma on the relation of the Attorney General to compel the County Clerk of Oklahoma County to carry out a lawful order of the Territorial Board of Equalization and perform a duty imposed on him by the statutes of the Territory.

Section 5624 of the Revised Statutes of Oklahoma, as amended March 8, 1895 (Session Laws, 1895, p. 15), provides that the Territorial Board of Equalization shall consist of the Governor of the Territory, the Territorial Auditor, and the Territorial Secretary, which shall meet on the third Monday in June each year at the Capital to examine the various county assessments and to equalize the same; to decide on the rate of territorial tax and to equalize the levy of such taxes throughout the Territory; and shall, furthermore, find the percentage that must be added to or deducted from the assessed value of each county, and shall then order the percentages so found to be added to or subtracted from the assessed values of each of the various counties of the Territory; and shall notify the various County Clerks of the percentage so ordered to be added to or subtracted

from the valuation of property in their respective counties. It shall then be the duty of the various County Clerks to add to or deduct from the total value of the property assessed to each party the percentage so ordered and collect the tax accordingly.

Pursuant to this statute the Territorial Board of Equalization for the Territory of Oklahoma met in the Auditor's office in the city of Guthrie, the Capital of the Territory, on the third Monday of June, 1898, being the 20th day of the month, two members being present. The abstracts of assessments not having been received from the counties the Board adjourned to meet Saturday, June 25, at 4 o'clock p. m. On that day the Board met at the Auditor's office pursuant to adjournment, all members being present; but the abstracts of assessment not yet having been received from all the counties, the Board adjourned to meet at the Auditor's office on Monday, June 27, at 10 o'clock a. m.

On June 27 the Board met pursuant to adjournment, two members being present. All abstracts of assessment except from one county having been received by the Secretary of the Board, the Board at once entered upon the work of making a levy. From the computation made by the Secretary of the Board it was found necessary to make certain changes in the county returns as reported, and, on motion, such changes were ordered to be made, to-wit:

Oklahoma County—Per cent increase, 24 per cent.

The only assessment which was allowed to stand as fixed by the County Boards of Equalization was that of Pottawatomie County.

On said 27th day of June, 1898, due and proper notice was sent by the Secretary of the Territorial Board of Equalization to the County Clerk of Oklahoma County,

Oklahoma Territory, to the effect that 24 per centum had been ordered added by the Territorial Board of Equalization to the total valuation of said county as reported by said County Clerk.

Said County Clerk, the appellant herein, failed and refused to add to the total value of the property assessed, as aforesaid, to each property owner in said county, as was his duty, the percentage so found and ordered by the Territorial Board of Equalization, and to extend said valuation so increased by said percentage upon the tax rolls of said Oklahoma County.

The Attorney General of the Territory of Oklahoma commenced legal proceedings in the Supreme Court of the Territory, by which, on August 12, 1898, an alternative writ of mandamus was issued against said appellant, the defendant below, requiring him to extend the valuations of property in Oklahoma County in the amount of 24 per cent. so found and ordered by the Territorial Board of Equalization to be added thereto, or show cause to the contrary.

Defendant filed his answer to said alternative writ on December 1, 1898, alleging among other things that the action of the Territorial Board of Equalization was without due process of law because no notice was given of this intended action; that said order was not made to equalize values, but for the illegal purpose of increasing the aggregate valuation of all the property in the Territory; that said order was made without competent evidence other than that of the assessment rolls of the various counties; that the assessment in Pottawatomie County appears to have been taken as the basis or standard on which valuations in Oklahoma County were raised; that the valuation on property in Oklahoma County, as shown by

the assessment roll certified by the defendant to the Territorial Board of Equalization, was its fair and true cash value, and is as high and in some cases higher than in Pottawatomie County; that a large part of the property so assessed and whose valuation is so increased consists of money, all of which facts are claimed to appear from copies attached of the assessment rolls in Oklahoma and Pottawatomie Counties; that defendant was ordered by the Board of County Commissioners in Oklahoma County not to comply with said order of the Territorial Board of Equalization, which said order defendant alleges was made because all the taxable property in Oklahoma County had already been valued at its actual and true cash value and is higher than in Pottawatomie County, to prove which alleged state of facts he demands a trial by jury; and said order of said County Board of Commissioners was further made because said order of the Territorial Board of Equalization was made without any notice or any opportunity for hearing.

When said order of the County Commissioners of Oklahoma County was made does not appear. A copy is found on page 15 of the record, marked "Exhibit D." The copy is certified to under date of August 31, 1898, the day before this defendant filed his answer to the alternative writ of mandamus, and there is no claim that the order was actually made before that day.

On page eleven of the record is "Exhibit B," giving the valuation of property assessed for taxation in Pottawatomie County as fixed by the County Board of Equalization. On page 13 of the record appears "Exhibit C," giving the valuation of property assessed for taxation in Oklahoma County, as fixed by the County Board of Equalization. Comparison between the two

returns to show relative assessments made on the same classes of property can only be shown on a few items, as follows:

	Pottawatomie Co.	Oklahoma Co.
Horses, average value	$14.87	$14.50
Asses and mules, average value	25.59	17.73
Cattle, six months old and over, average value	14.11	10.22
Swine, over three months old, average value	1.75	1.61

A demurrer to said return or answer of defendant to the alternative writ was sustained September 3, 1898, and a peremptory writ of mandamus issued against the defendant September 21. On October 1, 1898, defendant filed what he termed a reply to the apparent order of peremptory writ of mandamus and asked the court to state its findings of fact and law severally on the eighteen counts of the reply, and in the same pleading took an appeal to this court from said decision and order theretofore made by the Supreme Court of the Territory.

On November 22, 1898, on application of the Attorney General a rule was issued against the defendant requiring him to appear before the Supreme Court of the Territory December 2, 1898, and there show cause, if any, why he should not be punished as for contempt of court for not complying with said peremptory writ of mandamus.

On December 2, 1898, defendant filed an answer and return to said rule to show cause, which said answer was held insufficient, and defendant was, on said second day of December, 1898, adjudged in contempt of court and ordered committed to jail. The Court on the same day overruled the answer or reply of defendant

to the peremptory writ of mandamus and refused to grant a rehearing.

The cause was brought to this court on error and on appeal December 5, 1898.

STATEMENT OF LAW.

JURISDICTION.

The case should be dismissed for lack of jurisdiction. The amount involved is the sum which would be collected from the levy fixed by the Territorial Board of Equalization on the 24 per centum ordered by said Territorial Board to be added to the valuation of Oklahoma County. The total assessed value of the property in Oklahoma County was increased by the Territorial Board in the sum of $739,366. The Territorial tax rate for the year 1898 was four and three-tenths mills on the dollar of valuation, which would realize on the increase of valuation ordered by the Territorial Board the sum of $3,179.27. This is the entire amount involved in this case, the entire amount which will be affected one way or another by any decision this Court may render, and is not sufficient to give jurisdiction. The levy of taxes for county purposes is made by the County Commissioners, and is not at all involved or affected by the action of the Territorial Board of Equalization (Session Laws of Oklahoma, 1895, p. 218).

DUTY OF COUNTY CLERK.

Under Section 5624 of the Revised Statutes of the Territory of Oklahoma it is made the duty of the County Clerk to add to the tax duplicate of the county any increase of valuation of the property in said county or-

dered to be added thereto by the Territorial Board of Equalization. His duty in said premises is purely ministerial, and he is not at liberty to disobey the mandate of the Territorial Board.

The Supreme Court of Illinois, in Mix vs. The People, ex rel, 72 Ill., 241, has said:

"The County Clerk is a ministerial officer and has no discretion in acting under the orders of the Board of Supervisors in extending taxes upon their equalization; and if he refuses to extend the tax on their equalization he does so on his peril, and can only justify such refusal on the ground that to do so would violate the constitution of the State."

See also 25 Am. and Eng. Ency. of Law, 260.

POWER OF TERRITORIAL BOARD.

The action of the Territorial Board in raising the total valuation of the taxable property of the Territory is strictly legal and in accordance with the law of the Territory. This question has been passed on fully by the Supreme Court of the Territory. The question came up first in the case of Wallace vs. Bullen, 6 Okla., 17. The Court in this case held that the revenue laws of the Territory establish one system for levying and collecting taxes, and that under such system all property is made subject to taxation and required to be assessed at its true value. The Territorial Board of Equalization is the ultimate and final tribunal of review, with power of equalization, to the end that all valuations of property shall be at its true value. When the Territorial Board finds that one county has returned its property at the true cash value and that every other county had returned its property below the true cash value, the Board may order that such percentage be added to the

valuations of property in the other counties as will bring their assessments up to the true cash value. The Territorial Board may lawfully increase the aggregate valuation of property in the several counties of the Territory in order to put the valuation on the basis of the true cash value of all the property in the territory.

In Wallace vs. Bullen, supra, the Court said: To equalize means to make equal to, to take a standard and make all other objects conform thereto. The Territorial Board of Equalization may do so, notwithstanding it increases the aggregate valuation in the Territory.

This decision was reversed in Gray et al. vs. Stiles, Treasurer, in 6 Okla., 455, but was reaffirmed in Wallace vs. Bullen, 6 Okla., 757, and was again reaffirmed in Webb & Jones vs. Renfrew et al., 7 Okla., 198.

In Weber et al. vs. Dillon, Treasurer, 7 Okla., 568, the Court again held that the Territorial Board of Equalization may adopt the returns of any county which in its judgment the most nearly represents the actual value of all the property therein, and equalize all the other counties by either raising or lowering their assessment to conform to the standard adopted, even if the total taxable valuation of the Territory is thereby increased. In Bardrick vs. Dillon, 7 Okla., 535, the Court announced the same doctrine with regard to the right of the County Board to equalize and increase the aggregate valuation of the property in its county. This doctrine remained the law of the Territory until February 24, 1899, when a law was enacted by the Territory Legislature providing that the Territorial Board of Equalization shall not increase or decrease the aggregate grand total of the valuation of the taxable property of the Territory.

The organic act of the Territory, Section 6, provides:

"Nor shall any unequal discrimination be made in taxing different kinds of property, but all property subject to taxation shall be taxed in proportion to its value."

This record further shows that the increase in the aggregate valuation of the property of the Territory was actually necessary and incidental to a proper and just equalization.

It is clear then that the mandate of the Supreme Court of the Territory made in this case against the appellant was strictly in accordance with the law of the Territory, and there was no excuse whatever for disobeying said mandate.

This very question was by this Court, in the concluding paragraphs of the opinion rendered in Thomas vs. Gay, 169 U. S., 264, referred back to the Supreme Court of the Territory, where the question was then pending on an order for a rehearing. The question was finally decided in Wallace vs. Bullen, 6 Okla., 757, no appeal was ever taken therefrom and the doctrine there finally established became the settled law of the Territory.

DUE PROCESS OF LAW.

It is stated, however, that the action of the Territorial Board of Equalization was illegal because "without due process of law." The process of law in the enforcement and collection of a tax does not require that persons taxed by the law of the State shall be present or have an opportunity to be present when the tax is assessed against them. A statute giving a taxpayer the right to enjoin the collection of a tax and have its validity decided by a court of justice is due process of law.

McMillen vs. Anderson, 5 Otto, 37.

Section 4143, Statutes of Oklahoma, expressly provides that injunction will lie to enjoin the illegal levy or the collection of any illegal tax, and the Court held in Wallace et al. vs. Bullen, supra, that even without express statutory authority the general powers of a court of equity would be ample to afford relief in such a case.

25 Am. and Eng. Ency. of Law, 254, and cases cited.

This Court has held, in "State Railroad Tax" cases, 92 U. S., 575, as follows:

"The main function of this Board is to equalize its assessments over the whole State. If they find that a county has had its property assessed too high in reference to the general standard they may reduce its valuation; if it has been fixed too low, they raise it to that standard. When they raise it in any county they necessarily raise it on the property of every individual who owns any in that county. Must each one of these have notice and a separate hearing? If a railroad company is by law entitled to such notice, surely every individual is equally entitled to it. Yet, if this be so, the expense of giving notice, the delay of hearing each individual, would render the exercise of the main function of this Board impossible. Nor is there any hardship in the matter. This Board has its time of sitting fixed by law. Its sessions are not secret. No obstruction exists to the appearance of anyone before it to assert a right or redress a wrong; and in the assessing of a tax this is all that can be reasonably asked."

Affirmed in Pittsburg & C., C., St. L. R. R. Co. vs. Backus, 154 U. S., 421.

The necessity of revenue for the support of the government does not admit of the delay attendant upon

proceedings in a court of justice, and they are not required for the enforcement of taxes or assessments.

McMillen vs. Anderson, 5 Otto, 37.

In Hagar vs. Reclamation District, No. 108, 111 U. S., 701, this Court stated that the law in prescribing when the Board of Equalization meets gives all the notice required and the proceeding by which the valuation is determined, though it may be followed if the tax be not paid by the sale of the delinquent's property is due process of law.

Davidson vs. New Orleans, 96 U. S., 97.
See also Cincinnati (etc.) R. R. Co., vs. Kentucky, 115 U. S., 321.

Section 5624, Statutes of Oklahoma, as amended March 8, 1895, provided that the Territorial Board of Equalization should meet on the third Monday in June of each year at the Capital. This was due notice to everyone of the time and place of meeting of the Board.

The Board has evidence before it on which to act. The Supreme Court of the Territory had held that the Board could take the returns of any county in the Territory as a standard and could increase or decrease the assessments in the other counties to conform to that standard. It is not alleged that such a course was pursued in this case. The statement in the defendant's answer and return to the alternative writ of mandamus that—

"The assessed valuation of the property, both real and personal, of Pottawatomie County, as certified to said Board by the County Clerk thereof, appears to have been taken as a basis for the pretended equalization of the assessed valuation of the other counties and for its action in increasing the aggregate assessed valuation

of said Oklahoma County 24 per centum of its original valuation"

is entirely too indefinite, and is not such a specific allegation as is required by the rules of pleading to entitle it to attention. The Board may have acted on their own personal knowledge, as was their privilege. They were at liberty to act on any evidence satisfactory to themselves and to avail themselves of such information as they deemed proper, and the presumption is that they had sufficient evidence.

See 25 Am. and Eng. Ency. of Law, 258, and note 3.

Fields vs. Russell, 38 Kan., 720.

"Where the record does not show by affirmative proof that the Board did not act upon evidence before it, its order in the premises is conclusive that it did act upon such evidence as was necessary."

Hagenmeyer vs. Mendocino County, 62 Cal. 214.

EXCESSIVE VALUATION.

It does not appear that any property in Oklahoma County was, by the action of the Territorial Board of Equalization, which is complained of, appraised at more than its true value in money. It is alleged in appellant's answer and return to the alternative writ of mandamus that a large part of the property in said county so assessed, and whose valuation is increased by the order of said Territorial Board of Equalization, consists of money whose valuation was increased by said order of the Territorial Board of Equalization to the extent of 24 per centum thereof, *as is shown by the assessment roll of said county*, a copy of which was at-

tached to the answer and return and marked "Exhibit C." It appears by said statement of the property assessed for taxation in the County of Oklahoma, as fixed by the County Board of Equalization that "moneys and credits" were assessed at an average value of $31,175. How much of that item consists of money and how much of credits does not appear, and no presumption can be drawn that any money was assessed by said County Board at its true value, or that it is assessed at more than its true value, with 24 per cent. added to the valuation. It is not alleged precisely and specifically that any money has been assessed at more than its true value in money; the allegation is that said fact appears from the assessment roll of Oklahoma County, which appears in the record marked "Exhibit C," but such record fails to bear out such allegation, and the allegation must therefore fall.

REMEDY.

If any property has been valued more than its actual true value the remedy is by injunction to restrain the collection of the tax in excess of the proper amount.

Weber vs. Dillon, Treasurer, supra; 25 Am. and Eng. Ency. of Law, pages 259 and 448.

"A levy of tax in excess of the per cent. allowed by the constitution does not render the whole tax void, but only so much as is in excess of the constitutional limit if the tax within the constitutional limit can be separated from the portion that is in excess of that limit."

Mix vs. People, 72 Ill., 241.

If the said Board of Equalization was authorized to take the action it did the validity of said action cannot be attacked by defendant in a suit of mandamus brought to enforce its action.

It has been held repeatedly that a Board of Equalization having the authority and acting in the mode pursued by the Territorial Board of Equalization in this case acts in a quasi-judicial manner, and its judgments in such cases when duly made cannot be attacked collaterally in an action at law except for fraud or want of jurisdiction.

No allegation charging fraud has been made in this case and no mere discrepancy between the valuation of property made by the Territorial Board, and the judgment of the Court in that regard is sufficient to impeach such assessment for fraud.

St. Louis Bridge R. R. Co. vs People, 127 Ill., 627.

25 Am. and Eng. Ency. of Law, page 261.

This Court stated, in "State Railroad Tax" cases, supra:

"As all valuation of property is more or less a matter of opinion we see no reason why the opinion of this Court, or of the Circuit Court, should be better or should be substituted for that of the Board whose opinion the law has declared to be the one to govern in the matter."

And if the Board made an excessive estimate of the value of property it is

"by an error of judgment in the officers whose judgment the law confided that matter; and it does not lie with the Court to substitute its own judgment for that of the tribunal expressly created for that purpose."

See also 25 Am. and Eng. Ency. of Law, p. 261.

In a case involving some similar questions, and which came to this Court from the Territory of Oklahoma, it was held:

"The lawmaking power is to determine all question of discretion or policy in ordering or apportioning taxes and all necessary rules and regulations for their collection. Such questions are not for the courts unless the Legislature transcends its functions."

Thomas vs. Gay, 169 U. S., 264.

SUMMARY OF LAW.

The law on this entire subject is well summed up in Cooley on Taxation (2d edition, pp. 422, 748, 750 and notes).

These boards act judicially in equalizing valuations, and their decision, if they keep within their jurisdiction, is conclusive, except as otherwise provided by law. They act on their own judgment of what is equal and just. They are not bound to give notice to taxpayers before raising the assessment of a district except as the statute may provide for it. Any error in the fact of the valuation of property cannot be corrected here. Jurisdiction is expressly given in equity to afford relief against any erroneous judgment of the assessing board, and such remedy is exclusive.

CONCLUSION.

The conclusions clearly drawn from the foregoing are:

1. The Territorial Board of Equalization acted clearly within its jurisdiction in taking the action it did.

2. There was no absence of "due process of law."

3. It does not appear from the record that the Territorial Board of Equalization assessed any property in Oklahoma County at more than its true value in money.

4. As far as any comparison can be made of the rec-

ords the assessments in Oklahoma County were considerably lower than those in Pottawatomie County.

5. Equity furnishes ample relief if the action of the Territorial Board was erroneous, and such remedy is exclusive.

6. The duty of the County Clerk in the premises is purely ministerial and he has no excuse for disobeying the mandate of the Court below.

7. Writ of error should be dismissed and judgment below affirmed.

Respectfully submitted,

HARPER S. CUNNINGHAM,
CHARLES DICK, and
FREDERICK C. BRYAN,
For Defendant in Error and Appellee.